

be a violation of section 9 of the Act, if the incidental take results from routine ranching activities located on private or Tribal lands. Routine ranching activities include, but are not limited to, the following:

- (i) Livestock grazing according to normally acceptable and established levels of intensity in terms of the number of head of livestock per acre of rangeland;
- (ii) Control of ground-burrowing rodents using poisonous grain according to the labeled directions and local, State, and Federal regulations and guidelines (In areas where California red-legged frogs and California tiger salamanders coexist, the use of toxic or suffocating gases is not exempt from the prohibitions due to their nontarget-specific mode of action.);
- (iii) Control and management of burrow complexes using discing and grading to destroy burrows and fill openings (This exemption does not apply to areas within 0.7 mi (1.2 km) of known or potential California red-legged frog breeding ponds.);
- (iv) Routine management and maintenance of stock ponds and berms to maintain livestock water supplies (This exemption does not include the intentional introduction of species into a stock pond (including non-native fish and bullfrogs) that may prey on California red-legged frog adults, larvae, or eggs.);
- (v) Routine maintenance or construction of fences for grazing management;
- (vi) Planting, harvest, or rotation of unirrigated forage crops as part of a rangeland livestock operation;
- (vii) Maintenance and construction of livestock management facilities such as corrals, sheds, and other ranch outbuildings;
- (viii) Repair and maintenance of unimproved ranch roads (This exemption does not include improvement, upgrade, or construction of new roads.);
- (ix) Discing of fencelines or perimeter areas for fire prevention control;
- (x) Placement of mineral supplements; and

(xi) Control and management of noxious weeds.

[40 FR 44415, Sept. 26, 1975, as amended at 45 FR 47363, July 14, 1980; 67 FR 40811, June 13, 2002; 69 FR 47248, Aug. 4, 2004; 71 FR 19293, Apr. 13, 2006; 77 FR 16375, Mar. 20, 2012]

§ 17.44 Special rules—fishes.

(a) Lahontan cutthroat trout, Paiute cutthroat trout, and Arizona trout (*Salmo clarki henshawi*, *Salmo clarki seleniris*, and *Salmo apache*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

(2) Violation of State law will also be a violation of the Act.

(b) Bayou darter (*Etheostoma rubrum*). (1) All the provisions of §17.31 apply to this species, except that they may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(c) Slender chub (*Hybopsis cahnii*), spotfin chub (*Erimonax monachus*), slackwater darter (*Etheostoma boschungii*), and yellowfin madtom (*Noturus flavipinnis*). (1) All the provisions of §17.31 apply to these species, except that they may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(d) Leopard darter (*Percina pantherina*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(e) Little Kern golden trout (*Salmo aguabonita whitei*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(f) Greenback cutthroat trout (*Salmo clarki stomias*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

(2) Any violation of State law will also be a violation of the Act.

(g) Chihuahua chub (*Gila nigrescens*). (1) All provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State law.

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(2) Any violation of State law will also be a violation of the Endangered Species Act.

(h) Yaqui catfish (*Ictalurus pricei*) and beautiful shiner (*Notropis formosus*). (1) All provisions of §17.31 apply to these species, except that they may be taken for educational, scientific, or conservation purposes in accordance with applicable Arizona State laws and regulations.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

(i) Big Spring spinedace (*Lepidomeda mollispinis pratensis*). (1) All the provisions of §17.31 apply to this species, except that it may be taken in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to this species will also be a violation of the Endangered Species Act.

(j) Hutton tui chub (*Gila bicolor* subspecies) and Foskett speckled dace (*Rhinichthys osculus* subspecies). (1) No person shall take these species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of these species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any

offense defined in paragraphs (j) (1) through (3) of this section.

(k) Niangua darter, *Etheostoma nianguae*. (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (k) (1) through (3) of this section.

(l) Warner sucker (*Catostomus warnerensis*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (l) (1) through (3) of this section.

(m) Desert dace (*Eremichthys acros*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (m) (1) through (3) of this section.

(n) Railroad Valley springfish (*Crenichthys nevadae*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any

offense defined in paragraphs (n) (1) through (3) of this section.

(o) Sonora chub (*Gila ditaenia*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (o) (1) through (3) of this section.

(p)–(q) [Reserved]

(r) Pecos bluntnose shiner (*Notropis simus pecosensis*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any

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such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (r) (1) through (3) of this section.

(s) Waccamaw Silverside (*Menidia extensa*). (1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (s) (1) through (3) of this section.

(t) Little Colorado spinedace (*Lepidomeda vittata*). (1) No person shall take this species, except in accordance with applicable State Fish and Wildlife conservation laws and regulations in the following instances: for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (t) (1) through (3) of this section.

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(u) Pygmy sculpin (*Cottus pygmaeus*). The City of Anniston Water Works and Sewer Board will continue to use Coldwater Spring as a municipal water supply. Pumpage may remove all spring flow in excess of 3 cubic feet per second (1,938,000 gallons per day).

(v) Gulf sturgeon (*Acipenser oxyrinchus desotoi*). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any of this species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v)(1) through (3) of this section.

(5) Taking of this species for purposes other than those described in paragraph (v)(1) of this section, including taking incidental to otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32.

(w) *What species are covered by this special rule?* Bull trout (*Salvelinus confluentus*), wherever found in the co-terminous lower 48 States, except in the Jarbidge River Basin in Nevada and Idaho (see 50 CFR 17.44(x)).

(1) *What activities do we prohibit?* Except as noted in paragraph (w)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the bull trout in the co-terminous United States as defined in paragraph (w) of this section.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable

State, National Park Service, and Native American Tribal fish and conservation laws and regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) *What activities do we allow?* In the following instances you may take this species in accordance with applicable State, National Park Service, and Native American Tribal fish and wildlife conservation laws and regulations, as constituted in all respects relevant to protection of bull trout in effect on November 1, 1999:

(i) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations;

(3) *How does this rule relate to State protective regulations?* Any violation of applicable State, National Park Service, or Native American Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(x) Bull trout (*Salvelinus confluentus*), Jarbidge River population segment. (1) *Prohibitions.* Except as noted in paragraph (x)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the bull trout in the Jarbidge River population segment within the United States.

(2) *Exceptions.* No person may take this species, except in the following instances in accordance with applicable State fish and wildlife conservation laws and regulations relevant to protection of bull trout in effect on April 8, 1999.

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act;

(ii) Incidental to State-permitted recreational fishing activities, provided that any bull trout caught are immediately returned to the stream.

(iii) The exceptions in paragraphs (x)(2) (i) and (ii) of this section will be in effect until April 9, 2001. At that time, all take prohibitions of the Act will be reinstated for the Jarbidge River population segment unless exceptions to take prohibitions are otherwise provided through a subsequent special rule.

(3) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act.

(4) No person may possess, sell, deliver, carry, transport, ship, import, or export, any means whatsoever, any such species taken in violation of this section or in violation of applicable State fish and conservation laws and regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (x)(2) through (4) of this section.

(y) Beluga sturgeon (*Huso huso*)

(1) *How are various terms defined in this special rule?* In addition to the definitions specified in §10.12 of subchapter B of this chapter, we define certain terms that specifically apply to beluga sturgeon trade and this special rule as follows:

Aquacultured beluga sturgeon products. Eggs, larvae, fingerlings, or other products derived from *Huso huso* captive-bred or grown in captivity for commercial purposes starting at least at the F1 generation in captivity (*i.e.*, captive-bred for at least one generation).

Beluga caviar. Processed unfertilized eggs from female *Huso huso* intended for human consumption, including products containing such eggs (*e.g.*, cosmetics).

Beluga meat. Excised muscle tissue of *Huso huso* destined for human consumption.

Black Sea. The contiguous waters of the Black Sea and the Sea of Azov.

CITES. The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Export. The transport of a beluga sturgeon specimen out of its country of origin.

Hatchery-origin beluga sturgeon. Specimens of *Huso huso* captive-bred solely

in the littoral states, primarily for re-introduction and stock enhancement purposes. Such specimens can occur in the natural marine environment of the littoral states.

Live or living beluga sturgeon. Any living specimen of *Huso huso*, including viable unfertilized or fertilized eggs, larvae, fingerlings, juveniles, and adults.

Littoral states. Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine.

Re-export. Export of beluga sturgeon specimens that were previously imported.

Wild beluga sturgeon. Specimens of *Huso huso* born and reared in the natural marine environment within the current or former geographic range of the species.

(2) *What activities involving beluga sturgeon are affected by this rule?* (i) *International trade in beluga sturgeon.* Except as provided in paragraphs (y)(3) and (y)(5) of this section, all prohibitions and provisions of §§17.31(a) and 17.32 apply to the international trade in beluga sturgeon, including its parts and derivatives. Live beluga sturgeon remain subject to all the prohibitions and provisions of §§17.31(a) and 17.32.

(ii) *Trade without CITES documents.* Except as provided in paragraph (y)(3) of this section, you may not import, export, or re-export, or present for export or re-export, beluga sturgeon or beluga sturgeon products without valid CITES permits and other permits and licenses issued under parts 13, 17, and 23 of this chapter.

(iii) *Commercial activity.* Except as provided in paragraphs (y)(3) and (5) of this section and §17.32, you may not sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any beluga sturgeon or beluga sturgeon products.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (y)(2)(ii) and (iii) of this section.

(3) *What activities are exempted from threatened species permits by this rule?* (i)

Import, export or re-export, and interstate and foreign commerce involving certain caviar and meat obtained from beluga sturgeon. You may import, export or re-export, or conduct interstate or foreign commerce in beluga sturgeon caviar and meat without a threatened species permit issued according to §17.32 only if the caviar and meat are derived from wild or hatchery-origin beluga sturgeon that were caught and processed in the littoral states, or the caviar and meat are exempt from permits because they originate from qualifying aquaculture facilities outside of littoral states (see paragraph (y)(5) of this section). Also, the provisions in parts 13, 14, and 23 of this chapter and the following requirements must be met:

(A) Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(B) The shipment must be accompanied by a valid CITES permit or certificate upon import, export, or re-export.

(C) For each shipment covered by this exemption, the country of origin and each country of re-export, and the country of import involved in the trade of a particular shipment, must have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country from which Parties should not accept permits for beluga sturgeon or all CITES-listed species in general.

(D) The littoral state from which the beluga sturgeon caviar or meat originated has complied with all of the requirements shown in paragraph (y)(4) of this section, and none of the exporting, importing, or re-exporting countries involved in the commercial activity has been subject to an administrative trade restriction or suspension as outlined in paragraphs (y)(6) and (7) of this section.

(E) Any relevant aquaculture facility located outside of a littoral state has complied with all of the requirements

shown in paragraph (y)(5) of this section.

(ii) *Personal and household effects.* You may import, export, or re-export, or conduct interstate or foreign commerce in beluga sturgeon specimens that qualify as personal or household effects under 50 CFR part 23 without a threatened species permit otherwise required under §17.32. Trade suspensions or trade restrictions administratively imposed by the Service under paragraphs (y)(6) or (y)(7) of this section may also apply to personal and household effects of beluga sturgeon caviar.

(4) *What must beluga sturgeon littoral states do to be authorized under the special rule to export to the United States?* The following requirements apply to the littoral states wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under §17.32. These requirements apply to all shipments of beluga caviar and beluga meat that originate in the littoral states, even if the shipments are re-exported to the United States via an intermediary country. (See paragraph (y)(7) of this section for more information on the Service's biennial reviews under the special rule.)

(i) *Basin-wide beluga sturgeon management plans.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under §17.32 must submit to the Service's Division of Scientific Authority a copy of a cooperative management plan for its respective basin (i.e., Black Sea or Caspian Sea) that addresses *Huso huso* conservation. Each of these two basin-wide management plans must be agreed to by all of the littoral states (not just exporting nations) in the Black Sea or the Caspian Sea, as appropriate. Upon receipt, the Division of Scientific Authority will review these basin-wide management plans within 90 days for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit basin-wide management plans

by the specified deadline, or if we are unable to confirm that all littoral states are signatories to those plans, we will immediately suspend trade with all littoral states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist. Submission of documents in English may help expedite the Service's review. These cooperative management plans must contain the following elements:

(A) A clear statement of the recovery and management objectives of the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

(B) A statement of standard regulations and habitat improvement strategies (e.g., size limits, target harvest rates, quotas, seasons, fishing gear, effort caps, fish passage improvement, water quality controls) to be utilized by the nations involved;

(C) A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

(D) A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

(E) Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards mentioned in paragraph (y)(4)(i)(B) of this section; and

(F) A complete schedule by which nations must take particular actions to be in compliance with the plan.

(ii) *National regulations.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States under this special rule must provide the Service's Division of Scientific Authority with copies of national legislation and regulations that implement the basin-wide cooperative management plan described in paragraph (y)(4)(i) of this

section, including regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. Upon receipt, the Division of Scientific Authority will review these national laws and regulations within 90 days for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit copies of national laws and regulations by the specified deadline, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect. Submission of documents in English may help expedite the Service's review.

(iii) *CITES compliance.* Trade in beluga sturgeon specimens must comply with CITES requirements in 50 CFR part 23. Except for specimens that qualify as personal or household effects under 50 CFR part 23, all beluga sturgeon specimens, including those exempted from threatened species permits under this special rule, must be accompanied by valid CITES documents upon import, export, or re-export. Beluga sturgeon caviar, including beluga sturgeon caviar in interstate commerce in the United States, must be labeled in accordance with the CITES labeling requirements in 50 CFR part 23.

(iv) *Initial reporting period.* Until September 6, 2005, no threatened species permits will be required for the import, export, re-export, or interstate or foreign commerce of beluga sturgeon caviar and meat that originated in the littoral states, in order to provide the littoral states time to submit the required documentation. After this 6-month period, the exemption from threatened species permits will continue only while the Service reviews littoral state compliance with paragraphs (y)(4)(i) through (iv) of this section. If this review demonstrates that the provisions of this special rule are not met, the Service will announce and institute trade restrictions or suspensions in beluga sturgeon caviar or meat

with one or more littoral states as per paragraph (y)(7) of this section.

(v) *Biennial reports.* Littoral state governments wishing to export specimens of beluga sturgeon caviar or meat to the United States under this special rule must provide to the Service's Division of Scientific Authority reports containing the most recent information available on the status of the species, following the information guidelines specified below. The Service must receive the first report no later than December 1, 2005, and every 2 years thereafter on the anniversary of that date. Starting in December 2005, and thereafter on a biennial basis, the Service will review the national reports within 90 days of receiving them and any other pertinent information on wild beluga sturgeon conservation. If any elements of the biennial reports are missing or unclear, the Service will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit biennial reports by the specified deadline, we will immediately suspend trade with the given littoral states (*see* paragraph (y)(7) of this section for details on how such a suspension would be instituted and announced). Submission of documents in English may help expedite the Service's review. We propose to use these reviews to determine whether littoral state management programs are leading to recovery of wild beluga sturgeon stocks. For each littoral state, the following information must be provided in the biennial reports:

(A) A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective littoral state, with any changes from the previous report highlighted;

(B) A description of any revisions to the cooperative management program mentioned in paragraph (y)(4)(i) of this section, including any new models, assumptions, or equations used to set harvest and export quotas;

(C) New information obtained in the last 2 years on beluga sturgeon distribution, stock size, models used for quota-setting, spawning activity, habitat use, hatchery programs and results, or other relevant subjects;

(D) A summary of law enforcement activities undertaken in the last 2 years, and a description of any changes in programs to prevent poaching and smuggling, including indicators of their effectiveness;

(E) A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective littoral state, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (e.g., revenues allocated to hatchery and restocking programs or research programs); and

(F) Export data for the previous two calendar years.

(5) *Can aquacultured beluga sturgeon products be exempt from threatened species permits if the products originate outside the littoral states?* We will consider exemptions from threatened species permits for beluga caviar and meat obtained from aquaculture facilities outside the littoral states. These exemptions will be for individual facilities, and would allow aquacultured beluga caviar and meat originating from these facilities to be imported, exported, re-exported, or traded in interstate and foreign commerce without threatened species permits issued under Section 10 of the Act. Aquaculture facilities within the United States could also be exempt from prohibitions against take for purposes of harvesting caviar or meat (*i.e.*, killing of beluga sturgeon), or for conducting activities involving research to enhance the survival or propagation of the species. Facilities outside the littoral states wishing to obtain such exemptions must submit a written request to the Division of Management Authority at the address provided at 50 CFR 2.1(b) and provide information that shows, at a minimum, all of the following:

(i) The facility in question is using best management practices to prevent the escape of beluga sturgeon and disease pathogens into local ecosystems, as certified by the relevant regulatory agency. In the case of the United States, the relevant regulatory authority will be the state agency with jurisdiction over aquaculture. In the case of foreign aquaculture facilities outside the littoral states, the relevant regulatory agency will be the designated

CITES Management Authority with jurisdiction over sturgeon. Best management practices that affect the applicant's facility must be part of the application and available for Service review.

(ii) The facility in question has entered into a formal agreement with one or more littoral states to study, protect, or otherwise enhance the survival of wild beluga sturgeon. Copies of such agreements must be provided.

(iii) The facility in question does not rely on wild beluga sturgeon for broodstock. Proof of broodstock origin, including relevant CITES permits that accompanied broodstock specimens upon import into the United States, must be part of the application.

(iv) Exemptions granted under paragraph (y)(5) of this section shall not apply to trade (import, export, re-export, or interstate and foreign commerce) in live beluga sturgeon, and may be revoked at any time if the Service determines that any of the criteria shown in paragraphs (y)(5)(i) through (iii) of this section are not met by the facility. Applicants will be required to submit biennial reports on their compliance with paragraphs (y)(5)(i) through (iii) of this section, starting on the second anniversary of any programmatic exemption granted to the applicants. These biennial reports must show that exempted facilities have actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation. Any beluga caviar originating from aquaculture facilities outside the littoral states must comply with CITES caviar-labeling requirements, even in interstate commerce within the United States. We will publish an information notice if the Service grants a programmatic exemption to any aquaculture facility outside the littoral states, and announce such actions through our website and posting notices at our wildlife ports of entry. We will follow the provisions of paragraph (y)(7) of this section to announce restrictions or revocations of such programmatic exemptions, based on our review of facilities' biennial reports.

(6) *How will the Service inform the public of CITES restrictions on trade in beluga sturgeon?* We will issue a public

bulletin that identifies a restriction or suspension of trade in specimens of beluga sturgeon and post it on our websites (<http://le.fws.gov> and <http://international.fws.gov>) and at our staffed wildlife ports of entry if any criterion in paragraphs (y)(6)(i) or (ii) of this section is met:

(i) The country is lacking a designated Management Authority or Scientific Authority for the issuance of valid CITES documents or their equivalent for beluga sturgeon.

(ii) The country is identified in any action adopted by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification to the Parties issued by the CITES Secretariat as a country from which Parties are asked not to accept shipments of specimens of beluga sturgeon or all CITES-listed species.

NOTE TO PARAGRAPH (y)(6): A listing of all countries that have not designated either a Management Authority or Scientific Authority, or that have been identified as countries from which Parties should not accept permits, is available by writing to the Division of Management Authority at the address provided at 50 CFR 2.1(b).

(7) *How will the Service set trade restrictions or prohibitions under the special rule?* The Service's Division of Scientific Authority will conduct a biennial review of beluga sturgeon conservation based on information in the cooperative basin-wide management plans, national regulations and laws, and biennial reports (submitted as per paragraph (y)(4) of this section, and, for aquaculture facilities, as per paragraph (y)(5)(iv) of this section). We will combine that review with a review of other relevant information (e.g., scientific literature, law enforcement data, government-to-government consultations) to determine whether littoral state management programs and aquaculture operations are effectively achieving conservation benefits for beluga sturgeon. Based on this information, or the failure to obtain it, the Service may restrict or prohibit trade from a littoral state, a re-exporting intermediary country, or an entire basin (*i.e.*, the Caspian Sea or Black Sea) or a specific aquaculture facility outside the littoral states if we determine that the conservation or manage-

ment status of beluga sturgeon has been adversely affected and the continued recovery of beluga sturgeon may be compromised. The decision to restrict or prohibit trade in beluga sturgeon products on a national, basin, or region-wide scale will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a national, basin, or region-wide scale.

(i) Trade restrictions or suspensions will result basin-wide, for specific littoral states, or for non-littoral state aquaculture facilities under one or more of the following scenarios:

(A) Failure to submit any of the reports, legislation, and management plans described in paragraph (y)(4) of this section, or failure to respond to requests for additional information;

(B) A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

(C) A change in littoral state laws or regulations that compromises beluga sturgeon recovery or survival in the wild;

(D) Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

(E) A decline in wild *Huso huso* populations, as documented in national reports outlined above or the scientific literature, that goes unaddressed by regional or national management programs;

(F) Failure to address poaching or smuggling in beluga sturgeon, their parts, or products in the littoral states or re-exporting countries, as documented in national reports described above or other law enforcement sources;

(G) Failure of the littoral states to address the loss of beluga sturgeon habitat quality or quantity;

(H) Failure of the littoral states or re-exporting countries to follow the caviar-labeling recommendations of the CITES Parties (currently embodied in Resolution Conf. 12.7);

(I) Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries; or

(J) An aquaculture facility outside the littoral states has been issued a

programmatic exemption from threatened species permits under paragraph (y)(5) of this section, but is not abiding by the provisions of paragraphs (y)(5)(i) through (iii) of this section, or, based on the biennial reports required under paragraph (y)(5) of this section, has not actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation.

(K) Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

(ii) We will publish an information notice in the FEDERAL REGISTER, as well as on our Web site and at our wildlife ports of entry, if the Service's Division of Scientific Authority administratively suspends or restricts trade in beluga sturgeon products after determining that wild beluga sturgeon stock status worsens or threats to the species increase. This information notice will provide:

(A) The problem(s) identified in the biennial reports or other salient documents.

(B) The scope of the problem and the number of nations involved.

(C) The scope of the trade restriction or suspension we are imposing, including products covered, duration of the restriction or suspension, and criteria for lifting it and reinstating any exemption to threatened species permits.

(D) How the public can provide input, make comments, and recommend remedial action to withdraw the trade measures imposed.

(z) Gila trout (*Oncorhynchus gilae*). (1) Except as noted in paragraph (z)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 apply to the Gila trout.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable fish and conservation laws and regulations promulgated by the States of New Mexico or Arizona.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense listed in paragraph (z)(1)(i) of this section.

(2) In the following instances you may take Gila trout in accordance with applicable State fish and wildlife conservation laws and regulations to protect this species in the States of New Mexico or Arizona:

(i) Fishing activities authorized under New Mexico or Arizona laws and regulations; and

(ii) Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act.

(3) The four relict populations of Gila trout (Main Diamond Creek, South Diamond Creek, Spruce Creek, and Whiskey Creek) will not be opened to fishing.

(4) Any changes to State recreational fishing regulations will be made by the States in collaboration with the Service.

(5) Any violation of State applicable fish and wildlife conservation laws or regulations with respect to the taking of this species is also a violation of the Endangered Species Act of 1973, as amended.

(aa) Shovelnose sturgeon (*Scaphirhynchus platyrhynchus*). (1) Within the geographic areas set forth in paragraph (aa)(2) of this section, except as expressly noted in this paragraph, take of any shovelnose sturgeon, shovelnose-pallid sturgeon hybrids, or their roe associated with or related to a commercial fishing activity is prohibited. Capture of shovelnose sturgeon or shovelnose-pallid sturgeon hybrids in commercial fishing gear is not prohibited if it is accidental or incidental to otherwise legal commercial fishing activities, such as commercial fishing targeting nonsturgeon species, provided the animal is released immediately upon discovery, with all roe intact, at the point of capture.

(2) The shovelnose and shovelnose-pallid sturgeon hybrid populations covered by this special rule occur in portions of Arkansas, Iowa, Illinois, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Montana, North Dakota, Nebraska, South Dakota, and Tennessee. The specific areas are:

(i) The portion of the Missouri River in Iowa, Kansas, Missouri, Montana,

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North Dakota, Nebraska, and South Dakota;

(ii) The portion of the Mississippi River downstream from the Melvin Price Locks and Dam (Lock and Dam 26) in Arkansas, Illinois, Kentucky, Louisiana, Missouri, Mississippi, and Tennessee;

(iii) The Platte River downstream of the Elkhorn River confluence in Nebraska;

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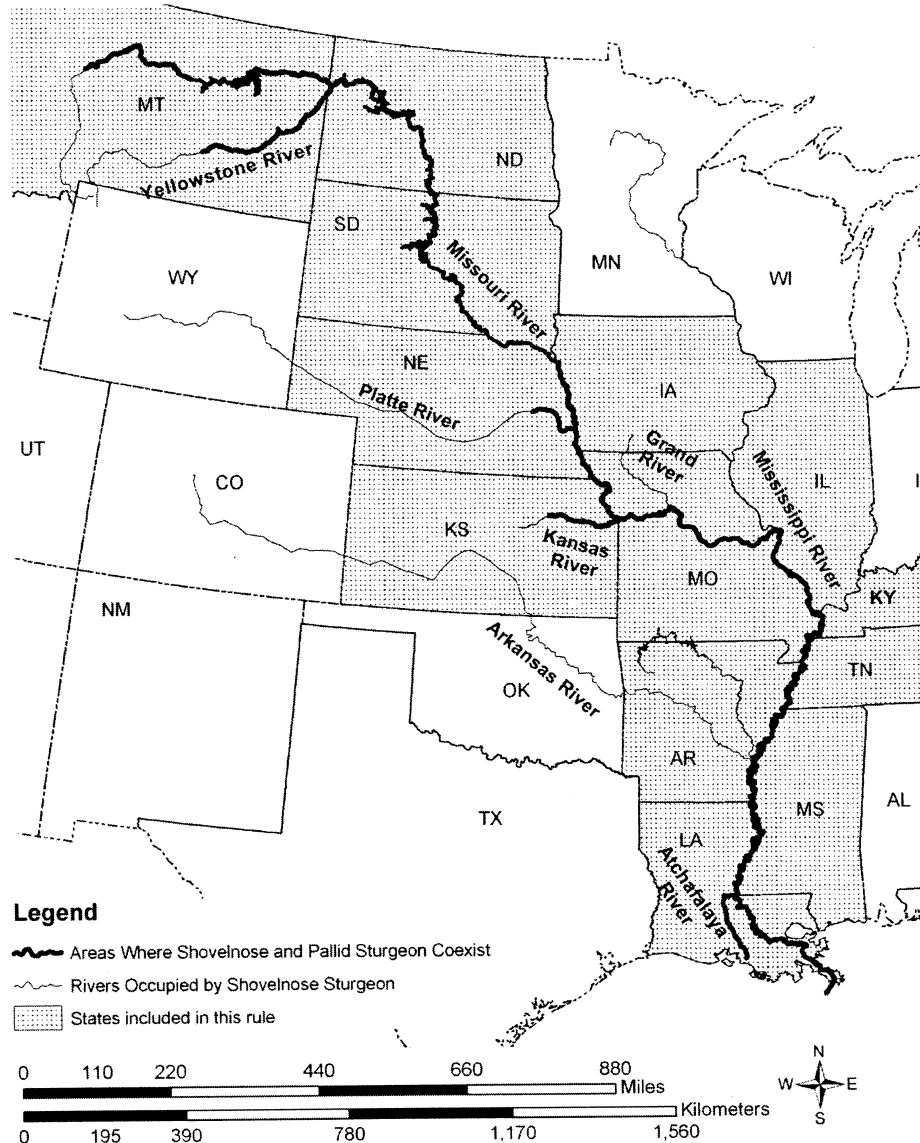
(iv) The portion of the Kansas River downstream from the Bowersock Dam in Kansas;

(v) The Yellowstone River downstream of the Bighorn River confluence in North Dakota and Montana; and

(vi) The Atchafalaya River in Louisiana.

(3) A map showing the area covered by this special rule (the area of shared habitat between shovelnose and pallid sturgeon) follows:

Figure 1: Areas Where Pallid and Shovelnose Sturgeon Commonly Coexist in the Missouri and Mississippi River Basins



(bb) Okaloosa darter (*Etheostoma okaloosae*).

(1) Except as noted in paragraphs (bb)(2) and (bb)(3) of this section, all prohibitions of 50 CFR 17.31 and exemp-

tions of 50 CFR 17.32 apply to the Okaloosa darter.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any

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Okaloosa darters taken in violation of this section or in violation of applicable State fish and wildlife conservation laws or regulations.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense listed in this special rule.

(2) The following activities, which may result in incidental take of the Okaloosa darter, are allowed on Eglin Air Force Base (AFB), provided that the activities occur in accordance with applicable Federal, State, and local laws, and are consistent with a Service-approved Integrated Natural Resources Management Plan by Eglin AFB and with Eglin AFB's Threatened and Endangered Species Component Plan:

(i) Prescribed fire for land management to promote a healthy ecosystem;

(ii) Instream habitat restoration;

(iii) Unpaved range road stabilization; and

(iv) Removal or replacement of culverts for the purpose of road decommissioning, improving fish passage, or enhancing stream habitat.

(3) Scientific research and monitoring activities that may result in incidental take of the Okaloosa darter are allowed, provided these activities are consistent with a Service-approved Okaloosa darter recovery plan, or otherwise approved by the Service, whether those activities occur on or off of Eglin AFB.

(4) Take caused by any activities not listed in paragraph (bb)(2) and (bb)(3) of this section is prohibited.

[40 FR 44415, Sept. 26, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §17.44, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 17.45 Special rules—snails and clams. [Reserved]

§ 17.46 Special rules—crustaceans.

(a) Madison Cave isopod (*Antrolana lira*). (1) All provisions of §17.31 (a) and (b) apply to this species except that it may be taken for scientific purposes without Federal permits issued pursuant to these regulations: *Provided*, that all other Federal, State, or local laws,

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regulations, ordinances or other restrictions or limitations have been complied with.

(b) [Reserved]

[47 FR 43701, Oct. 4, 1982]

§ 17.47 Special rules—insects.

(a) Cassius blue butterfly (*Leptotes cassius theonus*), Ceraunus blue butterfly (*Hemiargus ceraunus antibubastus*), and Nickerbean blue butterfly (*Cyclargus ammon*).

(1) The provisions of §17.31(c) apply to these species (cassius blue butterfly, ceraunus blue butterfly, nickerbean blue butterfly), regardless of whether in the wild or in captivity, and also apply to the progeny of any such butterfly.

(2) Any violation of State law will also be a violation of the Act.

(3) Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, will not apply to the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly.

(4) Collection of the cassius blue butterfly, ceraunus blue butterfly, and nickerbean blue butterfly is prohibited in coastal counties south of Interstate 4 and extending to the boundaries of the State of Florida at the endpoints of Interstate 4 at Tampa and Daytona Beach. Specifically, such activities are prohibited in the following counties: Brevard, Broward, Charlotte, Collier, De Soto, Hillsborough, Indian River, Lee, Manatee, Pinellas, Sarasota, St. Lucie, Martin, Miami-Dade, Monroe, Palm Beach, and Volusia.

(b) [Reserved]

[77 FR 20986, Apr. 6, 2012]

§ 17.48 Special rules—common sponges and other forms. [Reserved]

Subpart E—Similarity of Appearance

SOURCE: 42 FR 32377, June 24, 1977, unless otherwise noted.

§ 17.50 General.

(a) Whenever a species which is not Endangered or Threatened closely resembles an Endangered or Threatened species, such species may be treated as